



POLICE DEPARTMENT

October 4, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-24675
Police Officer Bryan Scheblein	:	
Tax Registry No. 955457	:	
52 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Bryan Scheblein, while assigned to the 52nd Precinct and on duty, on or about July 3, 2021, after having received multiple prior directions, instructions, or orders to prepare Stop Reports, failed to prepare said Stop Report.

P.G. 212-11, Page 7, Paragraph 28(d)
and Page 10, Paragraph 47

INVESTIGATIVE ENCOUNTERS;
REQUESTS FOR INFORMATION,
COMMON LAW RIGHT OF
INQUIRY AND LEVEL 3 STOPS –
COMMAND OPERATIONS

A.G. 304-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

A.G. 304-05, Page 1, Paragraphs 1 and 4

PERFORMANCE ON DUTY
GENERAL REGULATIONS

2. Police Officer Bryan Scheblein, while assigned to the 52nd Precinct and on duty, on or about July 3, 2021, searched a vehicle without a legal basis, to wit: involuntary consent search.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 212-11, Pages 6-7, Paragraph 28

INVESTIGATIVE ENCOUNTERS;
REQUESTS FOR INFORMATION,
COMMON LAW RIGHT OF
INQUIRY AND LEVEL 3 STOPS –
COMMAND OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 7, 2022. Respondent, through his counsel, entered a plea of Guilty to the subject charges, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. The Department Advocate recommends that Respondent

forfeit a total of twenty-three (23) vacation days, and that he be placed on dismissal probation. Having reviewed all of the evidence in this matter, I find that the penalty suggested by the Advocate is excessive, and instead recommend that Respondent forfeit thirteen (13) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

This case stems from a car stop which occurred on the evening of July 3, 2021 in the confines of the 52 Precinct in the Bronx. Respondent, who was assigned to the Public Safety Unit, was in an unmarked car with two fellow officers and a sergeant. They observed a vehicle with tinted windows backing up a one-way street for an extended distance, before parking in a no standing zone. A preliminary check of the license plate indicated that the car had been reported stolen. The officers approached, and Respondent removed the operator from the car. During a subsequent search of the vehicle, Respondent recovered a loaded firearm. The operator fled, but after a brief chase he was apprehended, and charged with criminal possession of a weapon. The indictment against the operator was subsequently dismissed because of concerns about the nature of the car search that led to the recovery of the firearm. Here, Respondent has pleaded guilty to searching the vehicle without obtaining valid consent, and for failing to prepare a Stop Report, even after having been advised on multiple occasions in the past of the need to do so.

Footage from Respondent's Body Worn Camera (Dept. Ex. 1) shows the interaction between the officers and the operator. Respondent approaches the vehicle, and the operator informs him that his license is not valid and that he was just parking the car for his wife. He also tells the officers that he was recently paroled. Respondent asks for the keys to the car, and has the operator step out of the vehicle. With the operator's consent, Respondent frisks him for weapons, and nothing is recovered.

The operator is then moved, uncuffed, to the rear of the vehicle, while Respondent and his colleagues continue their investigation, with one of the officers apparently using his phone to verify whether the car has been reported stolen.¹ At 7:50 of the footage, Respondent asks for the operator's consent to search the car from "bumper to bumper." The operator answers that he does not give permission. In response to a question, the operator states that there are no narcotics or guns inside the vehicle. Another officer asks if they can search the car, and the operator definitively repeats that he does not give permission to search the vehicle. Respondent pursues the issue with the operator, asking why he does not want to give consent; the operator appears reluctant to give an answer, and then concedes that it is because there is alcohol in the car. Respondent assures him this is not a DUI investigation, and again asks for consent to search the vehicle. The operator throws up his hands and relents, stating "alright...the bottle's right there...look around."

The sergeant begins searching inside the vehicle while Respondent and the other officers stay by the back of the car with the operator. After the sergeant completes his search with negative results, Respondent then opens the locked passenger glove box, using the keys he originally obtained from the operator. There, he locates a firearm. Respondent exits the vehicle and indicates to his colleagues, "under," at which point they attempt to place the operator in handcuffs. The operator flees and a foot pursuit ensues for several blocks before he is finally apprehended, while Respondent returns to the scene to secure the vehicle and the gun.

Respondent testified that the reason he continued to ask the operator for consent to search the vehicle was because he found the operator's behavior somewhat suspicious, including his story about parking the car for his wife. He also indicated that he noticed the operator nervously

¹ While still at the scene, the officers clarified that the vehicle was not stolen.

looking back and forth between the car keys and the front passenger area of the vehicle, creating further suspicion. When Respondent then checked the glove box, he observed a revolver with bullets in it. Respondent alerted his colleagues, and the operator fled; during the ensuing chase he injured his leg leaping off of a ledge, before he was apprehended. (Tr. 31-33, 38-41, 59-60, 65-66)

Respondent conceded that he now understands that he did not receive valid consent to search the vehicle. When he learned that the charges against the operator had been dismissed based on the improper search, he researched case law and now has a better understanding of his responsibilities during an encounter: when an individual plainly declines to give consent to search, Respondent accedes to their wishes and does not pursue the matter further. Respondent testified that he has not let this incident deter him from making gun arrests, and he continues to be an active police officer; rather, he has "learned and adapted" his approach to comply with the applicable law. (Tr. 48-50, 76)

As the arresting officer for this incident, Respondent completed the paperwork for the case, including the arrest and complaint reports, Consent to Search form, TRI, and vouchers. He also was responsible for completing a Stop Report pursuant to Section 212-11 of the Patrol Guide. Respondent concedes he did not prepare a Stop Report here, even though he had been instructed and admonished on the need to do so on approximately four prior occasions after supervisors had reviewed his BWC footage, including two times in 2020 where Respondent was issued "A" level Command Disciplines. Respondent explained that he was not trying to avoid doing paperwork in this matter or "skirt any responsibility;" rather, he and his colleagues did discuss which reports needed to be completed, and determined that the Consent to Search form superseded the need for a Stop Report since that form would include both the frisk of the

operator and the vehicle search. Respondent testified that he now understands that he should have prepared a Stop Report as well, and that he has learned to be more careful in completing all the necessary paperwork. (Tr. 42-48, 68-71)

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 9, 2013, has pleaded guilty to two charges, for conducting a vehicle search without first obtaining valid consent, and for failing to prepare a Stop Report. Counsel for Respondent argues that a penalty of 12 vacation days is sufficient to address the misconduct in this case. The Department Advocate recommends a forfeiture of 23 vacation days, one-year dismissal probation, and a Fourth Amendment "Refresher" training course with a focus on consent searches. For the reasons discussed below, the Advocate's recommendation is excessive.

With regards to the unlawful search, the Advocate asks for a penalty of three (3) vacation days, the presumptive penalty for a wrongful search. I agree with that recommendation. Section 212-11 of the Patrol Guide emphasizes that consent must be "voluntary," and that an officer must make clear to the individual that if they do not consent, no search will occur. The goal is to elicit a clear "yes" or "no" response from the individual. Under the circumstances presented here, the

"consent" obtained by Respondent was not sufficient to justify the search. As a result of the improper search, the indictment against the operator was dismissed, and there needs to be appropriate accountability.

However, it is important to keep in mind that this was not a situation where Respondent rushed in to search the vehicle without any regard for the operator's rights. Rather, Respondent, who from his experience was suspicious of the operator's behavior, first engaged him in conversation, where he repeatedly asked for consent to search. After initially declining consent, the operator eventually relented and told the officers to go ahead and look around. At no point during the search did the operator offer any protest, either verbal or physical, nor did he ask the officers to stop the search. The supervising sergeant on the scene, who was present for this entire exchange, initially searched the car himself, then stood by as Respondent looked inside the glove compartment and recovered a firearm.

Respondent has readily acknowledged that he did not obtain proper consent from the operator before searching the vehicle. He came across as sincere and contrite on the witness stand as he acknowledged his mistake, and genuinely regrets his role in having the charges against the operator dismissed. Moreover, he convincingly articulated that he has learned from the experience, and taken proactive steps to gain a better understanding of his responsibilities. The Tribunal is particularly encouraged that Respondent has continued to be an active police officer; as he stated, rather than be deterred from doing his job, he has "learned and adapted." On balance, I find that the presumptive penalty of three (3) vacation days is appropriate to address Respondent's improper search of the vehicle.

With respect to the other charge, the Department Advocate recommends that Respondent forfeit 20 vacation days, and that he be placed on dismissal probation for a period of one year.

for failing to prepare a Stop Report. It is the position of the Advocate that in light of Respondent's multiple prior instructions and admonishments on the need to prepare Stop Reports, his failure to do so here constitutes "insubordination." I disagree with that characterization of what occurred in this particular case.

Although Respondent had previously failed to prepare a Stop Report on several occasions where one was required, and was subsequently instructed on the need to do so, I am not persuaded that in this case he acted with a willful intent to defy his supervisors. Nor was this a situation where Respondent was intentionally refusing to obey an order. Rather, Respondent took the time to deliberate with his colleagues whether a Stop Report was needed in this situation. Ultimately he mistakenly decided that the Consent to Search form he prepared superseded the need for a Stop Report, since the Consent form included information about the stop and frisk, as well as the vehicle search. At trial, Respondent accepted responsibility for his error, acknowledging that he was wrong in believing the one form was sufficient, and that he now understands the importance of completing all forms for every stop made.

Under these circumstances, I reject the Advocate's suggestion that dismissal probation is warranted for Respondent, who has no formal disciplinary history and an exceptional record with the Department, which includes 24 medals for Excellent Police Duty, 10 for Meritorious Police Duty, and 1 for Meritorious Police Duty – Integrity.

Nevertheless, I agree with the Advocate that it is troubling that Respondent failed to prepare the Stop Report here, despite having been instructed regarding these reports on multiple occasions in the past. Under the Disciplinary Guidelines, the presumptive penalty for failure to prepare a required report, the section that most fairly captures the misconduct in this case, is five penalty days, with an aggravated penalty of up to 10 days. In light of the prior warnings, the

maximum aggravated penalty of ten (10) vacation days is appropriate, a significant loss of days that hopefully will deter Respondent from repeating such misconduct in the future.

Since the two offenses here were separate and distinct, the penalties should run consecutively. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit a total of thirteen (13) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAY 19 2023

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER BRYAN SCHEBLEIN
TAX REGISTRY NO. 955457
DISCIPLINARY CASE NO. 2022-24675

Respondent was appointed to the Department on July 9, 2013. On his three most recent annual performance evaluations, he was rated "Exceptional" for 2019, 2020 and 2021. He has been awarded 24 medals for Excellent Police Duty, 10 medals for Meritorious Police Duty, and one medal for Meritorious Police Duty – Integrity.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials